

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

PEDRO ROSSELLO, et al.,

Plaintiffs,

v.

BROWN & WILLIAMSON, et al.,

Defendants

CIVIL CASE NO. 97-1910 (JAF)

**ORIGINAL PARTICIPATING MANUFACTURERS' MOTION TO ENFORCE
THE ARBITRATION PROVISIONS
OF THE MASTER SETTLEMENT AGREEMENT**

TO THE HONORABLE COURT:

COME NOW, Defendants Philip Morris USA Inc., R.J. Reynolds Tobacco Company, and Lorillard Tobacco Company (the "Original Participating Manufacturers" or "OPMs"),¹ through their undersigned counsel, and respectfully move this Honorable Court to enforce their rights to arbitration under the Master Settlement Agreement ("MSA"), which is part of the Consent Decree and Final Judgment filed in this Court on December 1, 1998. In support of their motion, the OPMs state as follows:

1. In 1997, 52 States and Territories (the "Settling States") initiated litigation — including the above-captioned action brought by Puerto Rico — against the OPMs for the recovery of health-care costs that the Settling States attributed to smoking-related illnesses.

¹ The OPMs are Defendants Philip Morris USA, Inc. ("PM USA"), R.J. Reynolds Tobacco Company ("RJR"), and Lorillard Tobacco Company ("Lorillard"). In 2004, Brown & Williamson Tobacco Corporation, which was the fourth OPM, combined with R.J. Reynolds Tobacco Company. Moreover, Philip Morris Incorporated, an OPM, is now known as PM USA.

2. In 1998, the OPMs and the Settling States (including Puerto Rico) entered into the MSA, which released all past and future claims by the Settling States. In exchange for those releases, the OPMs agreed to a variety of marketing restrictions and other obligations and agreed to make substantial annual payments.

3. This Court has retained jurisdiction over this case for the purpose of implementing and enforcing the terms of the MSA. The OPMs bring this Motion pursuant to Section 2 of the Federal Arbitration Act, 9 U.S.C. §§ 2, 3 and 4, and Section XI(c) of the Tobacco Litigation Master Settlement Agreement (“MSA”).²

4. The Independent Auditor that calculates nationwide annual payments owed by the OPMs refused to apply an adjustment (the “Non-Participating Manufacturer” or “NPM” Adjustment) to the OPMs’ payment due April 17, 2006. The OPMs dispute this refusal, Puerto Rico defends it.

5. As explained in detail in the OPMs’ memorandum in support filed with this motion, this dispute must be resolved through nationwide arbitration pursuant to Section XI(c) of the MSA. Twenty-two MSA courts across the United States have found this exact dispute arbitrable. Despite the OPMs’ request, however, Puerto Rico has refused to proceed with arbitration.

WHEREFORE, the OPMs respectfully request that this Honorable Court order Puerto Rico to arbitrate this dispute pursuant to Section XI(c) of the MSA.

Respectfully submitted.

In San Juan, Puerto Rico this 27th day of October, 2006.

² Section XI(c) of the MSA expressly incorporates the provisions of the Federal Arbitration Act. The MSA is set out in the Appendix of Exhibits (filed herewith) as Exhibit A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice to the following: Benjamin Acosta, Jr., Francisco A. Besosa, Edgardo Cartagena Santiago, Jose A. Fuentes Agostini, William A. Graffam, Manuel A. Guzman Rodriguez, Paul H. Hulsey, Juan A. Ramos Diaz, Hector Reichard Jr., Vicente Santori Coll, Francisco M. Troncoso, Richard Schell Asad, Eric A. Tulla. Notice will be served by regular mail to the following non registered attorneys:

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In San Juan, Puerto Rico this 27th day of October, 2006.

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